

Chapter NR 115

WISCONSIN'S SHORELAND PROTECTION PROGRAM

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NR 115.01 Purpose. (1) Section 59.692, Stats., requires counties to adopt zoning ordinances for the protection of all shorelands in unincorporated areas, and provides that if the department determines, after notice and hearing, that a county has not adopted a shoreland zoning ordinance by January 1, 1968, or that a county has adopted an ordinance which fails to meet minimum shoreland zoning standards that have been promulgated under s. 59.692, Stats., to accomplish the shoreland protection objectives found in s. 281.31, Stats., the department is to adopt a shoreland zoning ordinance to be administered by that county.

(2) Section 281.31 (1), Stats., provides that shoreland subdivision and zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty."

(3) It is the responsibility of the department, in the discharge of its mandate under ss. 59.692 and 281.31, Stats., to require counties to adhere to specific standards and criteria for navigable water protection regulations and their administration. Section 281.31 (6), Stats., provides that: "Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

(4) In order to meet the shoreland protection objectives found in ss. 281.31 (1) and (6), Stats., and to adequately protect local resources, counties may need to adopt more protective shoreland zoning and land division regulations than are required by the minimum standards in this chapter, such as waterway classification systems.

NR 115.02 Applicability. (1) The provisions of this chapter are applicable to county regulation of the use and development of unincorporated shoreland areas, and the regulation of previously unincorporated shoreland areas that were annexed by a city or village after May 7, 1982 or incorporated as a city or village after April 30, 1994. References in this chapter to counties, or county government agencies, shall be read to apply to cities and villages, or city and village agencies, when this chapter is applied to annexed or incorporated areas in situations where s. 59.692 (7), Stats., requires that shoreland zoning is to continue in effect.

(2) Town zoning ordinances that are more restrictive than the shoreland zoning ordinance of the county in which the town is located may be enforced in the shoreland zone, in addition to county shoreland zoning, to the extent of the greater restrictions, but any provisions that conflict with, or are less restrictive than, the county shoreland zoning ordinance are unenforceable in the shoreland area.

NOTE: A town has the authority to adopt a town zoning ordinance, including a town shoreland zoning ordinance, if the requirements of s. 60.61 or s. 60.62, Stats., are satisfied.

(3) Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with, and obtain all necessary permits under, local shoreland zoning ordinances.

(4) State agencies are required to comply with, and obtain all necessary permits under, local shoreland zoning ordinances if s. 13.48 (13), Stats., requires compliance with local zoning.

NOTE: Section 13.48 (13), Stats., requires compliance with the zoning ordinances of “the municipality in which construction takes place” for “every building, structure or facility that is constructed for the benefit of or use of the state, any state agency, board, commission or department.” However, as used in this statute, the term “state” is defined as a unit of government and does not include the inhabitants of the state. Buildings, structures or facilities that are constructed for the benefit of the general public are not required to comply with local zoning ordinance under s. 13.48 (13), Stats.

(5) The construction, reconstruction, maintenance and repair of highways, bridges, and other transportation projects carried out under the direction and supervision of the Wisconsin department of transportation are not subject to local shoreland zoning ordinances, if s. 30.2022, Stats., applies.

NR 115.03 Definitions. For the purpose of this chapter:

(1) “Access corridor” means a vegetated strip of land that extends through the primary shoreland buffer to provide pedestrian access to the waterfront.

(2) “Access site” means a lot or parcel of land providing public boat access or carry-in access.

(3) “Accessory structure” means a subordinate structure, the use of which is incidental to, and customarily found in connection with, the principal structure or use of the property. Accessory structures include, but are not limited to, detached garages, sheds, barns, gazebos, patios, decks (both detached and attached), swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks, detached stairways and lifts.

(4) “Agricultural practice” has the meaning found in s. 281.16 (1)(b), Stats.

NOTE: Section 281.16 (1)(b), Stats., defines “agricultural practice” to mean “beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.”

(5) “Campground” means a lot or parcel of land that is used for the purpose of providing sites for non-permanent overnight use by camping units.

(6) “Camping unit” means a portable device or enclosure, no more than 400 square feet in area, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle used as a temporary shelter for human habitation.

NOTE: A device or enclosure for human habitation that is larger than 400 square feet is a “residential use,” as that term is defined in s. NR 115.03 (37).

(7) “Conditional use (or special exception)” means a use that is specifically listed in a shoreland zoning ordinance as either a conditional use or special exception and that may only be permitted if the board of adjustment, the county zoning agency, or the county board, as authorized by county ordinance, determines that the conditions specified in the shoreland zoning ordinance for that use are satisfied.

(8) “County zoning agency” means the committee or commission created or designated by the county board under s. 59.69 (2)(a), Stats., to act in matters pertaining to county planning and zoning.

(9) “Dam” means any artificial barrier in or across a watercourse that has the primary purpose of impounding or diverting water. A dam includes all appurtenant works, such as a dike, canal or powerhouse.

(10) “Department” means the Wisconsin department of natural resources.

(11) “Disabled” means having a physical or mental impairment that substantially limits one or more major life activities.

(12) “Dwelling unit” has the meaning found in s. 106.50 (1m)(i), Stats.

NOTE: Section 106.50 (1m)(i), Stats., defines “dwelling unit” to mean “a structure or that part of a structure that is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons, who are maintaining a common household, to the exclusion of all others.”

(13) “Expansion” means an addition to an existing structure that is horizontal, vertical or both.

(14) “Floodplain” means the land that has been or may be hereafter covered by flood water during the regional flood. The regional flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the general watershed region, or both. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur.

NOTE: “Floodway” is defined in s. NR 116.03 (22) to mean “the channel of a river or stream, and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.”

(15) “Footprint” means the land area covered by a structure at ground level, measured on a horizontal plane. The “footprint” of a residence includes attached garages and porches, but excludes decks, patios, carports and roof overhangs.

(16) “Forest land” means any property on which trees exist, standing or fallen, alive or dead, that are primarily grown because they are valuable for forest products, watershed or wildlife protection or non-residential recreational uses in contrast to property where shade or ornamental trees are grown primarily because they are valuable for landscape, aesthetic, agricultural or similar purposes.

NOTE: A parcel of land need not be designated as managed forest land under ss. 77.80 to 77.91, Stats., or be enrolled in any other forest management program to be considered “forest land.”

(17) "Forest management activities" means actions taken on forest land to establish, maintain or enhance a forest including, but not limited to, planting trees, thinning and trimming trees, and harvesting timber and other forest products.

(18) "Foundation" means the underlying constructed base of a building or other structure, including but not limited to pillars, footings, timber posts, concrete slabs and concrete and masonry walls.

(19) "In-fill area" has the meaning found in s. NR 151.002 (18).

Note: Section NR 151.002 (18) defines "in-fill area" as to mean " an undeveloped area of land located within existing urban service sewer areas, surrounded by already existing development or existing development and natural or man-made features where development cannot occur.

(20) "Land disturbing activity" means any man-made alteration of the land surface resulting in a change in topography, existing vegetation or non-vegetative soil cover. Land disturbing activity includes filling and grading activities, the clearing and grubbing of vegetation, building foundation demolition, excavating, and pit trench dewatering.

(21) "Levee" means a continuous dike or embankment of earth constructed to prevent the flooding of certain areas of land.

(22) "Lift" means a mechanical device, either temporary or permanent, containing a mobile open top car, including hand or guard rails, a track upon which the open top car moves, and a mechanical device, which may or may not be motorized, to provide power to the open top car.

(23) "Lot" means a contiguous parcel of land with described boundaries that abuts, or has access via an easement or areas of common ownership to, a public street or road.

NOTE: For the purpose of the implementing this chapter, the area of a lot does not include any portion of the bed of a navigable body of water, as provided under s. NR 115.11.

(24) "Natural areas management activities" means actions taken to establish, maintain or enhance native plant communities or fish or wildlife habitat including, but not limited to, forest management activities, prairie restoration, wetland restoration and removal of exotic species.

(25) "Navigable waters" has the meaning found in s. 281.31, Stats.

NOTE: Section 281.31 (2)(d), Stats., defines "navigable water" or "navigable waters" to mean "Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of the boundary waters, which are navigable under the laws of this state."

Section 281.31 (2m), Stats., also provides that, notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.692, Stats., "does not apply to lands adjacent to farm drainage ditches if:

- (a) Such lands are not adjacent to a natural navigable stream or river;
- (b) Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and
- (c) Such lands are maintained in nonstructural agricultural use."

(26) "Nonconforming structure" means an existing, usable building or other structure whose location, dimensions or other physical characteristics do not conform to the standards in the current shoreland zoning ordinance but which was legally constructed or placed in its current location prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

(27) "Nonconforming use" means the use of an existing building, other structure or premises that does not conform to the land use restrictions in the current shoreland zoning ordinance but which was legally established prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

(28) "Non-permanent campsite" means a site in a campground that is used by camping units, none of which occupies the site for more than 120 days in any 12-month period, and is not used for a residential use.

(29) "Open fence" means a fence that does not have privacy slats, pickets or other solid coverings that block the view or flow of air through the fence, and that allows wildlife to move under, over or through the fence.

(30) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic.

(31) "Ordinary maintenance and repair" means any work done on a nonconforming structure that does not constitute expansion, structural alteration, or replacement and does not involve the replacement, alteration, or removal of any portion of the structure's foundation. The term "ordinary maintenance and repair" includes repair of crack's in foundations, the application of waterproof coatings to foundations, and the replacement of a flat roof with a pitched roof on a nonconforming principal structure, provided there is no increase in the useable living space within a structure as a result of the roof replacement, unless expansion is allowed under s. NR 115.19 (4)(c).

(32) "Primary shoreland buffer" means a vegetated buffer strip running parallel to the ordinary high-water mark, and extending inland from the ordinary high-water mark.

(33) "Principal structure" means the main building or other structure on a lot or parcel of land that is utilized for the property's principal use, including attached garages and porches on residential structures.

(34) "Professional natural resource manager" means a person with a college degree in a field of study related to natural resource management, or equivalent work experience, who is employed as a natural resource manager or who advises clients on natural resource management issues.

(35) "Reasonable accommodation" means allowing a disabled person to deviate from the strict requirements of the county's zoning ordinances if an accommodation is necessary and reasonable, in order not to unlawfully discriminate against the disabled person and to allow them equal housing opportunity.

NOTE: Federal courts have interpreted the "reasonable accommodations" requirement in the Federal Fair Housing Act to mean that an accommodation is reasonable "if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve." *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993)

(36) "Replacement" means the rebuilding, reconstructing or replacing all or substantially all of the components of a structure.

(37) "Residential use" means the use of any structure, or portion thereof, as a residence, including a home constructed on-site, a manufactured home, a mobile home, a park model home, an apartment building, a building containing condominium units, a row house, a duplex, a single family residence and any other building, device or enclosure that is used as a residence, or any

site in a campground that is occupied by the same camping unit or other structure for more than 120 days in any 12-month period.

(38) "Secondary shoreland buffer" means a vegetated buffer strip extending inland from the primary shoreland buffer.

(39) "Shoreland setback area" has the meaning found in s. 59.692 (1)(bn), Stats.

NOTE: Section 59.692 (1)(bn), Stats., defines "shoreland setback area" to mean "an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under this section."

(40) "Shorelands" and "shoreland zone" have the meaning found in s. 59.692 (1)(b), Stats.

NOTE: Section 59.692 (1)(b), Stats., defines "shorelands" to mean "the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 281.31 (2)(d):

1. One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.
2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater."

(41) "Shoreland-wetland zoning district" means a zoning district, created in compliance with the requirements of s. NR 115.07, comprised of shorelands that are designated as wetlands on Wisconsin wetland inventory maps prepared by the department.

(42) "Structural alteration" means the replacement or alteration of one or more of the structural components of a building's exterior walls or any of the structural components of other types of structures.

(43) "Structural component" means any part of the framework or supporting structure of a building or other structure. The structural components of a building's exterior walls include the vertical studs, top and bottom plates, and non-load-bearing walls, such as the wall at the gable end of a one-story house. Wall-coverings, such as siding on the exterior and dry wall on the interior, are not included in the definition of "structural component."

(44) "Structure" means any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed, either upon the ground, a river bed, stream bed or lake bed or upon another structure. For the purposes of this chapter, the term "structure" includes swimming pools, hot tubs, patios, decks and retaining walls, but does not include landscaping or earthwork including graded areas, filled areas, ditches, berms, or earthen terraces. The term "structure" does not include small objects that are easily moved by hand, such as lawn chairs, portable grills, portable picnic tables, small temporary fences around individual plants or small groups of plants to prevent animal herbivory, bird feeders, birdhouses and birdbaths.

(45) "Variance" means an authorization granted by the board of adjustment to construct, alter or use a building or other structure or use a parcel of land in manner that deviates from the requirements of a shoreland zoning ordinance.

(46) "Visually inconspicuous" means difficult to be seen, or not readily noticeable, in summer months as viewed from the water.

(47) "Wetland" has the meaning found in s 23.32 (1), Stats.

NOTE: Section 23.32 (1), Stats., defines “wetland” to mean “an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.”

NR 115.05 Shoreland zoning districts. (1) **PURPOSE.** Counties shall adopt shoreland and shoreland-wetland zoning districts to achieve the purposes in ss. 281.31 (1) and (6), Stats.

(2) **ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS.** Counties shall adopt shoreland zoning ordinances that establish, at a minimum, a shoreland-wetland zoning district that is regulated in compliance with the requirements in s. NR 115.07. If counties choose to establish other types of land use districts in shorelands (such as general purpose, agricultural, industrial, commercial, residential, recreational, or conservancy districts), such districts shall be established in, or incorporated by reference into, the county’s shoreland zoning ordinance adopted under s. 59.692, Stats.

NOTE: Section 56.692 (5), Stats., provides that an ordinance enacted under s. 59.692, Stats., supersedes all provisions of an ordinance enacted under s. 59.69, Stats., that relate to shorelands, which means that land use districts established in a comprehensive county zoning ordinance adopted under s. 59.69, Stats., will only apply in shorelands if those districts are also established in the county’s shoreland zoning ordinance adopted under s. 59.692, Stats. However, county construction site erosion control and storm water management zoning ordinances adopted under s. 59.693, Stats., are not superseded by an ordinance enacted under s. 59.692, Stats.

NR 115.07 Shoreland-wetland zoning. (1) **COUNTY REVIEW OF PRELIMINARY WETLAND INVENTORY MAPS.** Before the department prepares final Wisconsin wetland inventory maps:

(a) The department shall transmit to the county zoning agency copies of preliminary wetland inventory maps for that county.

(b) The county zoning agency shall have 90 days to review the preliminary maps unless the review period is extended by written approval of the department, but in no case shall the review period extend for more than 180 days.

(c) The county zoning agency shall hold a public hearing to solicit public comments on the preliminary wetland inventory maps. Notice of the time and place of the hearing shall be mailed to the town clerk of each town in the county and shall be published as a class 1 notice, under ch. 985, Stats.

(d) On or before the last day of the review period, the county zoning agency shall return the preliminary maps to the department. If the county zoning agency believes that the preliminary maps are inaccurate, discrepancies shall be noted on the maps with an accompanying narrative explaining the problem areas.

(e) The department shall schedule a meeting with the county zoning agency within 30 days of the return of the preliminary maps if the county zoning agency has indicated that they believe that there are inaccuracies on the maps.

(f) After meeting with the county zoning agency to discuss apparent map inaccuracies, the department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare the final Wisconsin wetland inventory maps for that county.

(g) The adoption of a final Wisconsin wetland inventory map is a final decision of the department and may be reviewed as provided in ch. 227, Stats.

(2) COUNTY ADOPTION OF SHORELAND-WETLAND ZONING. (a) Each county shall, within 6 months after receipt of final Wisconsin wetland inventory maps, or Wisconsin wetland inventory map amendments, for that county from the department, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district.

(b) Ordinance text and map amendments creating shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s.59.69 (5)(e) 2., Stats.

(c) The appropriate regional office of the department shall be provided with a copy of the proposed text and map amendments and with written notice of the public hearing at least 10 days prior to such hearing.

(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of ss. NR 115.05 to 115.21, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

(a) Hiking, fishing, trapping, hunting, swimming and boating.

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

NOTE: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland program in subchapter I of ch. 77, Stats., and the managed forest lands program in subchapter VI of ch. 77, Stats.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

(f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(g) The construction and maintenance of nonresidential structures used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if such building cannot as a practical matter be located outside the wetland, not to exceed 500 square feet, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

(j) The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

NOTE: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(l) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(4) **PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS.** Any use not permitted in sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5)(e), Stats., and the procedures outlined in sub. (5).

(5) **REZONING OF SHORELAND-WETLAND ZONING DISTRICTS.** (a) Official ordinance amendments are required for any change in shoreland-wetland zoning. Such amendments shall be made upon petition in accordance with provisions of s. 59.69 (5)(e), Stats.

(b) The county clerk shall submit a copy of every petition for an amendment to a shoreland-wetland zoning district to the appropriate regional office of the department within 5 days of the filing of such petition with the clerk.

(c) All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning for a public notice and hearing as required by s. 59.69 (5)(e) 2., Stats. The appropriate district regional office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

(d) In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland zoning ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning may result in a significant adverse impact upon any of the following:

1. Storm and flood water storage capacity;
2. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
4. Shoreline protection against soil erosion;
5. Fish spawning, breeding, nursery or feeding grounds;
6. Wildlife habitat; or
7. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

(e) If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in par. d., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

(f) As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

(g) The county shall send to the appropriate regional office of the department:

1. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and
2. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

(h) If the county board approves of the proposed amendment and the department determines, after review as required by s. NR 115.17 (2)(c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

(i) If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in par. (d), that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by par. (g). If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.592 (6), Stats., the proposed amendment shall not become effective while the ordinance

adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

NR 115.09 Land division review. (1) **PURPOSE.** Counties shall adopt land division review standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by ensuring that lots and other parcels of land created in the shoreland zone meet or exceed minimum lot size or development density standards in order to allow for adequate room for stormwater runoff control, private on-site wastewater treatment systems, and primary and secondary shoreland buffers; and to limit direct and cumulative impacts of development on water quality; near-shore aquatic, wetland, and upland wildlife habitat; and natural scenic beauty.

(2) **GENERAL.** All divisions of land in the shoreland zone that create, combine or reconfigure one or more lots or parcels of land that are 5 acres in size or smaller shall be reviewed by the county and shall satisfy the minimum lot size and development density standards in s. NR 115.11.

(3) **NAVIGABLE BODIES OF WATER WITHIN LOTS.** When land is divided in the shoreland zone, a lot or parcel may not be created that is divided by a navigable body of water unless the lot or parcel contains at least one site for a reasonably-sized principal structure that complies with the shoreland setback standards in s. NR 115.13 and the shoreland vegetation standards in s. NR 115.15.

(4) **SUBSTANDARDS LOTS IN COMMON OWNERSHIP.** If an undeveloped or developed substandard lot is in common ownership with abutting lands, the contiguous property in common ownership shall be considered a single lot and such a substandard lot may not be developed, sold or otherwise transferred, except as part of the entire parcel in common ownership, unless the substandard lot and abutting lands are re-divided to create lots that conform to the minimum lot size or development density standards in s. NR 115.11.

NR 115.11 Lot size and development density. (1) **PURPOSE.** Counties shall adopt lot size and development density standards achieve the purposes listed in s. NR 115.09 (1).

(2) **GENERAL.** (a) Except as provided in sub. (8) or where a variance has been granted by the county board of adjustment, the construction or placement of a structure on a lot or parcel of land may not be permitted unless the lot or parcel complies with the applicable lot size and development density standards in this section.

(b) In calculating the area of a lot or parcel, the beds of navigable waters shall not be included.

(c) The width of a riparian lot or parcel abutting navigable waters shall be measured at the ordinary high-water mark and at the shoreland setback required by the county. The width of an inland lot or parcel shall be measured at the roadway setback. The width measurement shall be made between the side lot boundaries on lines perpendicular to the mean bearing of the side lot boundaries.

(3) **RESIDENTIAL USES.** Except as provided in sub. (2)(a), (7) or (8), the construction or placement of a new residence and residential accessory structures on a lot or parcel of land may not be permitted, unless the lot or parcel satisfies the following minimum lot size standards:

(a) *Not served by public sanitary sewer.* Lots or parcels not served by public sanitary sewer shall:

1. Have a minimum area of 20,000 square feet and a minimum width of 100 feet for each building with one or two dwelling units.

2. Have a minimum area of 15,000 square feet and a minimum width of 75 feet for each dwelling unit in a common building with three to five dwelling units.

3. Have a minimum area of 12,500 square feet and a minimum width of 65 feet for each dwelling unit if in a common building with more than five dwelling units.

(b) *Served by public sanitary sewer.* Lots or parcels served by public sanitary sewer shall:

1. Have a minimum area of 10,000 square feet for each building with one or two dwelling units.

2. Have a minimum area of 7,500 square feet for each dwelling unit in a common building with three to five dwelling units.

3. Have a minimum area of 6,500 square feet for each dwelling unit if in a common building with more than five dwelling units.

(c) *Calculating maximum density for condominiums.* Any lot or parcel of land owned by a condominium association shall have a total area equal to the sum of the minimum area standards in pars. (a) and (b) for each of the dwelling units included in the condominium plat. The minimum area requirements in pars. (a) and (b) are not intended to create minimum lot size standards for individual condominium units.

(4) CAMPGROUNDS. Except as provided in sub. (2)(a), (7) or (8), the construction of a new campground, the expansion of an existing campground or the conversion of one or more non-permanent campsites to residential use on a lot or parcel of land may not be permitted, unless the campground satisfies all of the following minimum standards:

(a) *Calculating maximum density for campgrounds.* Campgrounds shall have a minimum area of 5 acres for the first 10 campsites. For additional campsites, the campground shall meet the density standards in Table 1, in addition to the 5 acres required for the first 10 campsites.

Table 1. Campground density standards.

Number of Campsites	Density Standard for Each Additional Campsite
11 – 50 non-permanent campsites	7,000 square feet for each additional non-permanent campsite between 11 & 50
51 + non-permanent campsites	5,000 square feet for each additional non-permanent campsite over 50
11 + residential use campsites	12,500 square feet for each additional residential use campsite over 10 if not served by a public sanitary sewer or 6,500 square feet for each additional residential use campsite over 10 if served by a public sanitary sewer

(b) *Lot or parcel width.* Campgrounds abutting navigable waters shall have a minimum width water frontage of 200 feet at the ordinary high-water mark, plus an additional 100 feet of width at the ordinary high-water mark for every 10 non-permanent campsites, and an additional 65 feet of width at the ordinary high-water mark for each residential use campsite.

(c) *Non-permanent campsites.* A camping unit no more than 400 square feet in area, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle, may not occupy a non-permanent campsite for more than 120 days in

any 12-month period. No structure other than a camping unit may be constructed or placed on a non-permanent campsite.

Note: A device or enclosure that is larger than 400 square feet or that occupies a site for more than 120 days in any 12-month period is a "residential use," as that term is defined in s. 115.03 (37).

(d) *Residential use campsites.* A structure may not be constructed or placed on a residential use campsite, unless the campground meets the campground density standards in par. (a), the campsite meets the minimum lot requirements for residential structures in sub. (3)(a) 1 or (3)(b) 1, and the structure meets applicable shoreland setback standards in s. NR 115.13.

NOTE: Mobile homes, camping trailers, recreational mobile homes, storage sheds, decks, porches and other similar structures are regulated under the county's shoreland zoning ordinance as "structures," as that term is defined in s. NR 115.03 (44), regardless of whether they are subject to taxation as real property or personal property or are exempt from property taxes.

(5) **KEYHOLE LOTS.** Except as provided in sub. (2)(a), the granting of access rights to the water over a lot or parcel of land abutting navigable waters for the benefit of inland lots or inland parcels may not be permitted, unless a conditional use permit is granted that satisfies all of the following minimum standards:

(a) *Density.* The lot or parcel abutting navigable waters shall have a minimum area of 20,000 square feet and a minimum width of 100 feet and an additional 10,000 square feet of area and 50 feet of width for each dwelling unit over two that is provided an access right to the lot or other parcel abutting navigable waters.

(b) *Location.* The inland lots or inland parcels receiving access rights to the lot or parcel abutting navigable waters shall be contiguous to each other and the lot or parcel abutting navigable waters except for roads.

(c) *Structures.* The construction or placement of structures on the lot or parcel abutting navigable waters may not be permitted except for structures that satisfy the standards in s. NR 115.13 (5)(a), (b), and (f).

(d) *Ownership.* Each inland lot or inland parcel shall have an undivided ownership interest in the lot or parcel abutting navigable waters and the lot or parcel abutting navigable waters may not be subdivided unless the minimum lot size standards in this section are satisfied.

(6) **OTHER USES.** Except as provided in sub. (2)(a), the construction or placement of a structure for uses other than those specified in subs. (3), (4), and (5) on a lot or parcel of land may not be permitted unless the lot or parcel has a minimum area of 20,000 square feet and a minimum width of 100 feet.

(7) **PLANNED UNIT DEVELOPMENT.** (a) A planned unit development with reduced lot sizes may not be permitted unless all of the following standards are satisfied:

1. The planned unit development shall have a minimum area of 5 acres.

2. The shoreland setbacks required in s. NR 115.13 shall be increased by a minimum of 50 feet.

3. The primary and secondary shoreland buffers required in s. NR 115.15 shall be preserved and maintained, or established and maintained when required by s. NR 115.21, and the depth of the primary and secondary shoreland buffers shall each be increased by a minimum of 25 feet.

4. Wetland buffers shall be preserved and maintained, or established and maintained, and shall be a minimum of 75 feet.

5. Floodplains, wetlands, steep slopes, primary shoreland buffers, and secondary shoreland buffers shall be protected areas from land disturbances.

6. Scenic views and vistas as viewed from the water shall be preserved.

7. Near-shore aquatic, wetland and upland wildlife habitat shall be protected.

8. Reasonably contiguous conservation areas that are protected by a permanent conservation easement that complies with the requirements of s. 700.40, Stats., common areas, active recreational areas, and pedestrian circulation systems shall be provided and shall be a minimum of 50% of the area of the planned unit development.

(b) The density of dwelling units in a planned unit development may not exceed the following standards:

1. For lots or parcels not served by public sanitary sewer:

a. For each building with one or two dwelling units, the lot or parcel shall have an area of not less than 10,000 square feet.

b. For each dwelling unit located in a common building with three to five dwelling units, the lot or parcel shall have an area of not less than 7,500 square feet.

c. For each dwelling unit located in a common building with more than five dwelling units, the lot or parcel shall have an area of not less than 6,500 square feet.

2. For lots or parcels served by public sanitary sewer:

a. For each building with one or two dwelling units, the lot or parcels shall have an area of not less than 7,000 square feet.

b. For each dwelling unit located in a common building with three to five dwelling units, the lot or parcel shall have an area of not less than 6,000 square feet.

c. For each dwelling unit located in a common building with more than five dwelling units, the lot or parcel shall have an area of not less than 5,000 square feet.

3. For campgrounds in a planned unit development, the campground shall have an area of not less than 5 acres for the first 10 campsites. For additional campsites, the campground shall meet the density standards in Table 2, in addition to the 5 acres required for the first 10 campsites.

Table 2. Planned Unit Development Campground density standards.

Number of Campsites	Density Standard for Each Additional Campsite
11 – 50 non-permanent campsites	5,000 square feet for each additional non-permanent campsite between 11 & 50
51 + non-permanent campsites	3,000 square feet for each additional non-permanent campsite over 50
11 + residential use campsites	10,000 square feet for each additional residential use campsite over 10 if not served by a public sanitary sewer or 5,000 square feet for each additional residential use campsite

(8) SUBSTANDARD LOTS. Except for structures allowed under ss. NR 115.13 (5)(a), (b), and (f), the construction or placement of a structure on a lot or parcel of land that does not comply with the standards of this section may not be permitted, unless the lot or parcel is a lot or parcel of record that complies with applicable standards in effect at the time the lot or parcel was recorded and the shoreland setback standards of s. NR 115.13, the shoreland vegetation standards of s. NR 115.15 and the land disturbing activity standards in s. NR 115.17 are satisfied.

NR 115.13 Shoreland setback. (1) PURPOSE. Counties shall adopt shoreland setback standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by controlling the density and location of development in order to allow adequate room between structures and navigable waters for primary shoreland buffers, secondary shoreland buffers, and for the infiltration of stormwater runoff; and to limit the direct and cumulative impacts of development on water quality; near-shore aquatic, wetland, and upland wildlife habitat; and natural scenic beauty.

(2) GENERAL. (a) Except as provided in subs. (4) to (6), or where a variance has been granted by the county board of adjustment, all buildings and other structures shall be setback a minimum of 75 feet from the ordinary high-water mark of navigable waters. This general standard requires that a setback of at least 75 feet from the ordinary high-water mark of navigable waters be enforced for all homes and other structures constructed on-site, manufactured homes, mobile homes, park model homes, mobile recreational vehicles, buses, vans, house boats and ice fishing shanties that are parked or placed on shorelands, regardless of whether or not the structure has wheels under it or is designed to float.

NOTE: A house boat or other structure that is licensed as a boat is still regulated under the county's shoreland zoning ordinance as a "structure," as that term is defined in s. NR 115.03 (44).

(b) The shoreland setback shall be measured on a horizontal plane from the point of a structure that is nearest to the ordinary high-water mark, including roof overhangs and any cantilevered portions of the structure, unless, prior to the [Revisor: insert the effective date of this rule], a county has measured shoreland setbacks to the nearest point of the foundation or base of a structure instead of measuring to roof overhangs. The county may continue to measure the shoreland setback on a horizontal plane from the foundation or base of a structure at the point that is nearest to the ordinary high-water mark, provided that the county's shoreland zoning ordinance also requires any cantilevered portion of a structure other than roof overhangs to be setback at least 75 feet from the ordinary high-water mark and limits roof overhang width to no more than 3 feet.

(3) PERMIT REQUIRED. Counties shall adopt a permit system for the construction, placement, replacement, expansion, structural alteration, demolition and moving of buildings and other structures in the shoreland zone, including structures that are exempt from the shoreland setback standards under subs. (4) and (5). However, counties may adopt ordinance provisions that allow specific structures that are exempt from the shoreland setback standards under subs. (4) and (5) to be constructed or placed without the issuance of a county permit if applicable standards in subs. (4) and (5) are complied with.

(4) STRUCTURES EXEMPTED BY OTHER LAWS. The following structures are exempt from the shoreland setback standards in sub. (2) if all of the applicable conditions that are listed in the following paragraphs are satisfied:

(a) OPEN SIDED AND SCREENED STRUCTURES. Open sided and screened structures such as gazebos, decks, patios, and screen houses, that satisfy the requirements in s. 59.692 (1v), Stats., are exempt from the shoreland setback standards in sub. (2).

(b) FISHING RAFTS. Fishing rafts that are authorized on the Wolf River and Mississippi River under s. 30.126, Stats., and that are pulled up onto the shore in the fall for winter storage but are moved onto the water in the spring are exempt from the shoreland setback standards in sub. (2).

(c) SATELLITE DISHES AND ANTENNAS. Satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are two meters or less in diameter, and that are rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures are exempt from the shoreland setback standards in sub. (2).

NOTE: Under 47 CFR 1.4000 and 25.104, state and local regulations that would impair the installation, maintenance or use of certain satellite dishes or antennas are prohibited.

(d) REASONABLE ACCOMMODATIONS FOR DISABLED PERSONS. The construction or expansion of structures that allow equal access to housing for a disabled person who is entitled to reasonable accommodations under the Americans with Disabilities Act, the federal Fair Housing Act or the Wisconsin Open Housing Law are exempt from the shoreland setback standards in sub. (2). Fishing piers and other facilities for use by disabled persons may also be allowed within the shoreland setback area of parks, resorts and campgrounds to provide disabled persons with an equal opportunity to participate in waterfront recreational activities provided that the facility is designed and located to minimize any adverse impact on water quality, fish and wildlife habitat and natural scenic beauty.

NOTE: Counties may not issue variances to disabled persons unless the statutory variance criteria in s. 59.694 (7)(c), Stats., are satisfied for the lot in question.

(e) DAMAGED OR DESTROYED NONCONFORMING STRUCTURES. 1. The repair, structural alteration and replacement of damaged or destroyed nonconforming structures shall be permitted, as required under s. 59.692 (1s), Stats., if all of the following conditions are satisfied:

a. The structure was damaged or destroyed after October 14, 1997.

b. The damage or destruction to the structure was caused by violent wind, vandalism, fire or flood.

c. The damage or destruction to the structure was not caused by a deliberate act of the landowner or his or her agent, and was not due to general deterioration or dilapidation of the structure.

d. The structure is restored to the location and use that it had immediately before the damage or destruction occurred.

e. The structure is restored to the size that it had immediately before the damage or destruction occurred, unless it is necessary for the structure to be larger than it was at the time of the damage or destruction to comply with applicable state or federal requirements.

(5) STRUCTURES THAT COUNTIES MAY EXEMPT. Counties may exempt the following structures from the shoreland setback standards in sub. (2) if all of the applicable conditions that are listed in the following paragraphs are satisfied:

(a) CHAPTER 30 AND 31 STRUCTURES. Structures that are regulated under ch. 30 or ch. 31, Stats., such as piers, rip-rap, biological shore control structures, fish cribs, boat shelters, boat ramps, and dams and bridges and their appurtenant structures that have required state and federal permits, or meet statutory or administrative rule standards that do not require a state or federal permit, may be exempt from the shoreland setback standards in sub. (2).

(b) WALKWAYS, STAIRWAYS, AND LIFTS. Walkways, stairways and lifts that satisfy all of the following conditions may be exempt from the shoreland setback standards in sub. (2):

1. Steep, rocky, unstable or wet site conditions require placement of a walkway, stairway or lift to provide pedestrian access to navigable waters or to provide public use of the shoreland.

2. Only one stairway or lift may be allowed on a lot or parcel of land with up to 5 dwelling units, except where there is an existing stairway and the lift will be mounted onto, or is immediately adjacent to, the existing stairway. For properties with more than 5 dwelling units, one additional stairway or lift may be allowed for each additional 5 dwelling units.

3. Any filling, grading or excavation that is proposed for the installation of a walkway, stairway or lift shall meet the requirements of s. NR 115.17. Walkways shall be constructed of materials that will minimize storm water runoff to the extent practicable, and vegetation shall be established before the onset of winter, and shall be maintained, to stabilize all land disturbed during the construction or placement of the walkway, stairway or lift.

4. The width of the walkway, stairway or lift may not exceed 4 feet.

5. Landings, if needed, may be located at the top of the stairway or lift, the bottom of the stairway or lift, and where a change in stairway direction is needed. Landings shall not exceed 40 square feet in size. One small bench per landing may be allowed.

6. Canopies, roofs and walls are prohibited. Open railings may be allowed if required for safety.

7. The walkway, stairway or lift is rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures.

(c) SIGNS. Water dependent informational signs with public health, safety or regulatory information that are no larger than necessary to accommodate the information that needs to be displayed may be exempt from the shoreland setback standards in sub. (2). Other informational signs may be exempt from the shoreland setback standards in sub. (2) if the county adopts standards for signs and associated lighting that preserve wildlife habitat and natural beauty.

(d) WATER QUALITY IMPROVEMENT STRUCTURES. Structures that are for the purpose of improving water quality, such as livestock runoff containment structures and that satisfy all of the following conditions, may be exempt from the shoreland setback standards in sub. (2):

1. The structure complies with agricultural runoff management performance standards in ss. NR 151.01 to 151.095, or is a necessary component of a conservation plan, or a water quality improvement plan approved by the department or the county land conservation department.

2. There is no alternative site outside of the shoreland setback area for the construction of the structure or the alternative site outside of the shoreland setback area is not economically viable because it would cost 115% or more than construction the shoreland setback area.

3. The property owner preserves and maintains, or establishes and maintains, vegetation within 50 feet of the ordinary high-water mark of the navigable waters in the area between the structure and the navigable waters, or if the structure is within 50 feet of the ordinary high-water mark, to the maximum extent practicable.

(e) WILDLIFE HABITAT IMPROVEMENT STRUCTURES. Structures that are for the purpose of improving, restoring or rehabilitating wildlife habitat, such as an aeration pump, and that satisfy all of the following conditions may be exempt from the shoreland setback standards in sub. (2).

1. The structure is a necessary component of a wildlife management plan approved by the department or the county land conservation department.

2. There is no feasible alternative site outside of the shoreland setback area.

3. The structure is rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures.

(f) EROSION CONTROL STRUCTURES. Erosion control structures that are located entirely above the ordinary high-water mark, such as retaining walls, that are determined by the county to be the only method to address significant on-going erosion or to provide necessary stability for existing principal structures, and that are rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures may be exempt from the shoreland setback standards in sub. (2).

(g). MARINE FUEL DISPENSING SYSTEMS. Marine fuel dispensing systems, including marine fuel storage tanks, that meet all of the applicable standards in ss. Comm 10.415 and 10.42 may be exempt from the shoreland setback standards in sub. (2).

(h) PUBLIC ACCESS SITES. Parking areas at public access sites that have no other feasible location on the lot or parcel of land outside of the shoreland setback area and that employ best management practices to infiltrate or otherwise control storm water runoff from the parking area are exempt from the shoreland setback standards in sub. (2). Privacy fences at public access sites that are along the perimeter of the property and that are rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures may be exempt from the shoreland setback standards in sub. (2).

(i) ROADS AND DRIVEWAYS. Roads and driveways that have no other feasible location to provide access to the lot or parcel of land and that employ best management practices to infiltrate or otherwise control storm water runoff from the road or driveway may be exempt from the shoreland setback standards in sub. (2).

(j) UTILITIES. Utility transmission lines, poles, towers, water towers, pumping stations, private on-site wastewater treatment systems that comply with ch. Comm 83, and other utility structures that have no other feasible location outside of the shoreland setback area, that employ if best management practices to infiltrate or otherwise control storm water runoff from the structure, and that are rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures, if practicable, may be exempt from the shoreland setback standards in sub. (2).

(k) AGRICULTURAL FENCES. Open fences on land used for agricultural practices that meet the standards of chs. 30 and 90, Stats., and that are not more than 6 feet tall may be exempt from the shoreland setback standards in sub. (2).

(l) CAPTIVE WILD ANIMAL FENCES. Fences for farm-raised deer that meet the requirements of s. 90.20 or 90.21, Stats., or fences at department-approved captive wild animal farms and wild fur farms that are licensed under ch. 169, Stats., may be exempt from the shoreland setback standards in sub. (2).

(m) **OPEN FENCES.** Open fences that are located in the secondary shoreland buffer, that are no more than 4 feet tall, and that are rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures may be exempt from the shoreland setback standards in sub. (2).

NOTE: Open fences are only allowed within the primary buffer if they fall within the exemption for agricultural fences in s. NR 115.13 (5)(k) or captive wild animal fencing in s. NR 115.13 (5)(l).

(6) **SETBACK REDUCTION PROCESS.** (a) Counties may not permit a reduced shoreland setback for a principal residential structure unless all of the following conditions are satisfied:

1. There is not a location available on the lot or parcel of land to build a principal residential structure in compliance with shoreland setback standards.

2. The lot or parcel of land has a minimum area of at least 7,000 square feet, a minimum width of 50 feet and is a legal lot or parcel of record.

2. The lot or parcel has a site for a reasonably-sized residential structure that does not include any land in a wetland, floodway, the primary shoreland buffer, a public right-of-way or the bed of a navigable body of water.

(b) If a lot or parcel meets all of the conditions of par. (a), the following process may be used to reduce the shoreland setback for a principal residential structure:

1. First, the roadway setback shall be reduced as much as is allowed by the governmental entity that has jurisdiction over the abutting street or road.

2. Second, the shoreland setback may be reduced in order to create a 30-foot deep building location, provided that the shoreland setback is not less than 50 feet.

(c) Counties may only apply a reduced shoreland setback that is calculated under par. (b) to residences and garages. The proposed footprint of the residence and garage may not exceed 1,500 square feet.

(d) Counties may apply to the department for the approval of an alternative reduced setback process with standards that are different than par. (b). Applications filed by counties under this paragraph shall demonstrate to the department all of the following:

a. How the proposed standard will achieve the purposes of ss. 281.31 (1) and (6), Stats., to control and prevent water pollution, prevent further degradation of near-shore aquatic, wetland and upland wildlife habitat, and preserve the natural scenic beauty of navigable waters.

b. How the proposed standard is more restrictive or as restrictive as that in subs. (b). Standards less restrictive than that in subs. (b) are presumed to not achieve the purposes of s. 281.31 (1) and (6), Stats.

NR 115.15 Shoreland vegetation standards. (1) **PURPOSE.** Counties shall adopt shoreland vegetation standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by preserving and establishing shoreland vegetation in order to infiltrate stormwater runoff, to screen shoreland development, and to limit direct and cumulative impacts of development on water quality; near-shore aquatic, wetland, and upland wildlife habitat; and natural scenic beauty.

(2) GENERAL. (a) Any vegetation removal in the shoreland zone shall be governed by consideration of the effect on water quality and sound forestry and soil conservation practices, and shall be designed and implemented in a manner to minimize erosion, sedimentation and impairment to near-shore aquatic, wetland, and upland wildlife habitat, and natural scenic beauty.

(b) Ground layer vegetation in the primary shoreland buffer, secondary shoreland buffer, and access corridor shall be preserved and maintained, or established and maintained, except for areas where structures are allowed under s. NR 115.13 or where activities are allowed in subs. (5) to (11).

(3) SHORELAND BUFFERS. Except as provided in subs. (4) to (12), or where a variance has been granted by the county board of adjustment, property owners shall preserve and maintain, or establish and maintain when required by s. NR 115.21, the following shoreland buffers:

(a) *Primary shoreland buffer.* 1. A primary shoreland buffer of native shoreland vegetation shall run parallel to the ordinary high-water mark. The depth of the primary shoreland buffer shall extend either:

a. A minimum of 50 feet inland, measured on a horizontal plane, from the ordinary high-water mark of navigable waters; or

b. A minimum of 35 feet inland, measured on a horizontal plane, from the ordinary high-water mark, and have an area in the shoreland setback area equal to 17% of the total area of the lot or parcel of land.

2. Vegetation may not be removed from the primary shoreland buffer, except for the removal of exotic or invasive vegetation, diseased or damaged vegetation, vegetation posing an imminent safety hazard or vegetation in an access corridor in compliance with subs. (4). Any removed vegetation shall be replaced by planting native vegetation in the same area or as required in subs. (4) for access corridors.

3. Lawns and other areas where native vegetation was removed, prior to the adoption of the shoreland zoning ordinance amendment requiring a primary shoreland buffer, may be maintained, but not expanded, until establishment of a primary shoreland buffer is required by s. NR 115.21.

(b) *Secondary shoreland buffer.* A secondary shoreland buffer of ground layer vegetation, such as turf grass, shall be preserved and maintained, or established and maintained, parallel to the ordinary high-water mark of navigable waters, and extending a minimum of 25 feet landward, measured on a horizontal plane, from the inland edge of the primary shoreland buffer. The removal of trees and shrubs may be allowed in the secondary shoreland buffer.

(4) ACCESS CORRIDOR. (a) The removal of trees and shrubs in corridors extending through the primary shoreland buffer to the waterfront may be allowed, in order to provide pedestrian access to the waterfront, provided that the total width of the corridors do not exceed:

1. For lots or parcels of land with 200 feet or less of width at the ordinary high-water mark, the total width of the corridor or corridors shall not exceed 30% of the lot or parcel's width at the ordinary high-water mark.

2. For lots or parcels of land with more than 200 feet of width at the ordinary high-water mark, the total width of the corridor or corridors shall not exceed 60 feet or 20% of the lot or parcel's width at the ordinary high-water mark, whichever is greater.

(b) Ground layer vegetation, such as turf grass, shall be preserved and maintained, or established and maintained, in the access corridors.

(c) For lots or parcels of land owned by a condominium association, the condominium association, or its representative, shall submit to the county a plan for the preservation, establishment, and maintenance of vegetation in the primary shoreland buffer if the condominium association intends to create one or more access corridors. The width of the access corridors on condominium-owned land may not exceed 30% of the total width at the ordinary high-water mark of the condominium-owned parcel or lot. No vegetation removal may be done to create an access corridor on condominium-owned lot or parcel of land until the county has approved of the condominium association's plan for vegetation in the primary shoreland buffer.

(5) AGRICULTURAL PRACTICES AND FARM DRAINAGE DITCHES. (a) Land used for non-structural agricultural practices is exempt from the shoreland buffer requirements in sub. (3).

NOTE: The Department of Natural Resources plans to develop standards for agricultural buffers in the shorelands of navigable bodies of water as part of the process to revise ch. NR 151.

(b) The land adjacent to farm drainage ditches with no previous stream history is exempt from county shoreland zoning regulation if the land adjacent to the farm drainage ditch is maintained in non-structural agricultural use, under s. 281.31 (2m), Stats. If land adjacent to a farm drainage ditch is not exempt from county shoreland zoning regulation, the removal of trees and shrubs within the primary buffer along the farm drainage ditch may be permitted by the county if the removal is part of drainage ditch maintenance work that is conducted consistent with the requirements of ch. 88, Stats., and if the tree and shrub removal is limited to the minimum amount necessary to maintain the farm drainage ditch. Land adjacent to farm drainage ditches shall be vegetated and maintained with ground layer vegetation, such as turf grass.

(6) FOREST MANAGEMENT ACTIVITIES. Forest management activities are exempt from the shoreland buffer requirements in sub. (3) if the property owner, or an agent or contractor of the owner, implements the voluntary forestry best management practices found in "Wisconsin's Forestry Best Management Practices for Water Quality, PUB FR-093 2003," published by the department in March 1995 and reprinted in May 2003.

NOTE: Copies of "Wisconsin's Forestry Best Management Practices for Water Quality, PUB FR-093 2003," are available for inspection at the offices of the Department of Natural Resources, the Secretary of State, and the Revisor of Statutes. Copies may be obtained from the Wisconsin Department of Natural Resources, Division of Forestry, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921. Property owners may seek advice on implementation of Forestry "BMPs" from county foresters and foresters employed by the Department of Natural Resources.

(7) NATURAL AREAS MANAGEMENT ACTIVITIES. Natural areas management activities are exempt from the shoreland buffer requirements in sub. (3) if carried out consistent with a department-approved management plan or with a management plan that was developed by a professional natural resource manager to satisfy the purposes of sub. (1), and if the plan is filed with the county, as specified in the county's shoreland zoning ordinance.

(8) DAM AND LEVEE MAINTENANCE ACTIVITIES. Dam and levee maintenance activities are exempt from the shoreland buffer requirements in sub. (3) if carried out consistent with the requirements of s. 31.18, Stats. Earthen dam and levee embankments shall be maintained with ground layer vegetation, such as turf grass.

(9) UTILITY MAINTENANCE ACTIVITIES. Utility maintenance activities are exempt from the shoreland buffer requirements in sub. (3) if carried out consistent with the safe operation of public utilities and if ground layer vegetation is preserved and maintained, or established and maintained.

(10) ROAD INTERSECTION AND DRIVEWAY MAINTENANCE ACTIVITIES. Roadway intersection and driveway line-of-sight maintenance activities are exempt from the shoreland buffer requirements in sub. (3) if necessary to maintain required lines-of-sight, provided that ground layer vegetation is preserved and maintained, or established and maintained, and if the activities are carried out consistent with ss. 66.1037 and 82.03 (5)(b), Stats., as affected by 2003 Wisconsin Act 214.

(11) TEMPORARY ACCESS. Activities that provide temporary access to a construction site for construction equipment are exempt from the shoreland buffer requirements in sub. (3) if no other feasible location is available for the equipment to access the construction site and if the county approves a revegetation and erosion control plan that is developed, implemented and maintained to address erosion control issues and to restore the ground, shrub and tree layers of vegetation in the areas disturbed by the temporary access. Vegetation shall be established before the onset of winter or a temporary ground cover shall be established and maintained to prevent soil erosion until permanent vegetation is established the following spring.

(12) REDUCED SHORELAND SETBACKS. Nonconforming structures or structures that qualify for a reduced shoreland setback under s. NR 115.13 (6) may have a reduced primary shoreland buffer if necessary to allow 15 feet of secondary buffer around the footprint of the principal structure.

(13) PROTECTIVE AREAS. (a) A protective area commences at the delineated boundary of wetlands and is the greatest of the following widths, as measured from the delineated wetland boundary to the closest impervious surface:

1. 75 feet for wetlands in areas of special natural resource interest as specified in s. NR 103.04.

2. 50 feet for highly susceptible wetlands. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with s. NR 103.08 (1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after than fill has been placed.

3. For less susceptible wetlands, 10% of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

(b) Determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.

(c) The following requirements shall be met:

1. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. A written site-specific explanation shall be provided for any parts of the protective area that are disturbed during construction.

2. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall

be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock rip-rap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.

Note: It is recommended that seeding of non-aggressive vegetative cover be used in the protective areas. Vegetation that is flood and drought tolerant and can provide long-term bank stability because of an extensive root system is preferable. Vegetative cover may be measured using the line transect method described in the university of Wisconsin extension publication number A3533, titled "Estimating Residue Using the Line Transect Method".

3. Best management practices such as filter strips, swales, or wet detention basins, that are designed to control pollutants from non-point sources may be located in the protective area.

Note: Other regulations, such as ch. 30, Stats., and chs. NR 103, 116, and 117, and their associated review and approval process may apply in the protective area.

NR 115.17 Land disturbing activities. (1) **PURPOSE.** Counties shall adopt land disturbing activity standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by minimizing vegetation removal, soil erosion, soil compaction, and sedimentation in order to limit direct and cumulative impacts of development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

(2) **GENERAL.** Except for the construction of necessary drains, ditches or embankments for the improvement or protection of a town highway that is authorized under s. 82.03 (5)(a), Stats., as affected by 2003 Wisconsin Act 214, counties may not allow land disturbing activities in the shoreland zone unless all of the following standards are satisfied:

(a) The land disturbing activities comply with the shoreland setback and shoreland buffer standards in ss. NR 115.13 and NR 115.15.

(b) The land disturbing activities satisfy the requirements of ch. 30, Stats., ch. NR 216, and other state and federal laws, where applicable.

(c) The land disturbing activities are designed to minimize erosion, sedimentation and impairment of water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

(3) **PERMIT REQUIRED.** A county permit is required for land disturbing activities if either of the following criteria are satisfied:

(a) 1,000 square feet or more of land disturbing activity occurs wholly or partially within 75 feet of the ordinary high-water mark of navigable waters.

(b) 2,000 square feet or more of land disturbing activity occurs wholly or partially between 75 feet and 300 feet from the ordinary high-water mark of navigable waters.

(4) **PERMIT EXEMPTION.** Any land disturbing activity for which a permit has been granted by the department under ch. 30, Stats., or ch. NR 216 may be exempt from the county permit requirement in sub. (3), if the permit is filed with the county as specified in the county's shoreland zoning ordinance.

NOTE: Counties also have the option of becoming an authorized local program under s. NR 216.415 for construction site storm water discharge permits or s. NR 341.02 (3) for grading on the bank of a navigable waterway in conjunction with the issuance of county permits.

NR 115.19 Nonconforming uses and structures. (1) **PURPOSE.** Counties shall adopt nonconforming uses and nonconforming structures standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by placing restrictions on expansions, structural alterations and replacement of nonconforming uses and structures in order to maintain adequate room between structures and navigable waters for primary shoreland buffers, secondary shoreland buffers, and the infiltration of stormwater runoff, and to limit the direct and cumulative impacts of development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

(2) **NONCONFORMING USES.** Under s. 59.69 (10) and s. 59.692 (2)(a), Stats., a county shoreland zoning ordinance may not prohibit the continuance of the lawful use of any building or premises for any trade or industry for which such building or premises is used at the time that the ordinance took effect, but the alteration of, or addition to, any existing building or other structure used for any nonconforming trade or industry may be regulated or prohibited, and is subject to the limitations in subs. (3) and (4) that apply to nonconforming structures in the shoreland area. Counties may also allow the continuation of other types of nonconforming uses in shorelands, subject to the limitations on nonconforming structures in subs. (3) and (4). However, under s. 59.69 (10), Stats., counties shall require any future use of the building and premises where a nonconforming use was located to conform to the county's shoreland zoning ordinance if a nonconforming use is discontinued for a period of 12 months.

NOTE: The minimum standards that apply to county regulation of lots and parcels of land in the shoreland area that do not conform to current minimum lot size and development density standards are found in ss. NR 115.09 (4) and NR 115.11 (8).

(3) **NONCONFORMING ACCESSORY STRUCTURES.** Counties shall regulate all nonconforming accessory structures that have any part of the structure in the shoreland setback area as follows, unless a variance has been granted by the county board of adjustment:

(a) The ordinary maintenance and repair of nonconforming accessory structures shall be allowed.

(b) The structural alteration of a nonconforming accessory building or the structural alteration of 25% or more of a nonconforming accessory structure that is not a building may not be permitted unless the structure is rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures.

(c) The expansion or replacement of a nonconforming accessory structure is prohibited.

(4) **NONCONFORMING PRINCIPAL STRUCTURES.** Counties shall regulate all nonconforming principal structures that have any part of the structure in the shoreland setback area as follows, unless a variance has been granted by the county board of adjustment:

(a) *Ordinary maintenance and repair.* Ordinary maintenance and repair of nonconforming principal structures shall be allowed.

(b) *Structural alteration.* The structural alteration of nonconforming principal structures may not be permitted unless the structure is rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures.

(c) *Expansion*. 1. The expansion of a nonconforming principal structure that has any part of the structure located within 50 feet of the ordinary high-water mark of navigable waters is prohibited.

2. The expansion of a nonconforming principal structure that is entirely set back a minimum of 50 feet from the ordinary high-water mark of navigable waters may not be permitted unless all of the following conditions are satisfied:

a. The lot or parcel of land that the nonconforming principal structure is located on has an area of at least 7,000 square feet.

b. There is not a location on the lot or parcel of land on which to build a principal structure in compliance with shoreland setback standards.

c. The footprint of the nonconforming principal structure and garage, if located in the shoreland setback area, with the new addition will not exceed 1,500 square feet.

d. If the expansion is horizontal, the expansion is on the side of the nonconforming principal structure furthest away from the ordinary high-water mark of the navigable waters.

e. All of the applicable performance standards in s. NR 115.21 are satisfied.

(d) *Replacement*. 1. The replacement of a nonconforming principal structure may not be permitted unless of the following conditions are satisfied:

a. The lot or parcel of land that the nonconforming principal structure is located on has an area of at least 7,000 square feet.

b. If the existing nonconforming principal structure does not have a foundation, the structure may be replaced without a foundation, or the structure may be replaced on a new foundation if the existing nonconforming principal structure is entirely setback a minimum of 50 feet from the ordinary high-water mark of navigable waters.

c. If the existing nonconforming principal structure has a foundation, the structure may be replaced on the existing foundation, or the structure's foundation may be removed, structurally altered, or replaced if the existing nonconforming principal structure is entirely setback a minimum of 50 feet from the ordinary high-water mark of navigable waters.

d. No portion of the replacement structure may extend closer to the ordinary high-water mark than the existing nonconforming principal structure.

e. If any part of the nonconforming principal structure is located within 50 feet of the ordinary high-water mark, the height of the replacement structure may not exceed the height of the existing structure, unless an increase in height is necessary to convert a flat roof to a pitched roof.

f. All of the applicable performance standards in s. NR 115.21 are satisfied.

2. The expansion of a nonconforming principal structure that is also being replaced may not be permitted unless the existing nonconforming principal structure is entirely set back a minimum of 50 feet from the ordinary high-water mark of navigable waters and if all of the conditions in subd. 1. and par. (c) 2. are satisfied.

(5) **OPTIONAL STANDARDS.** (a) *Conditional use permits*. Counties have the option of requiring a conditional use permit issued by the county zoning agency designated under s. 59.69 (2)(a), Stats., the board of adjustment designated under s. 59.694, Stats., or the county board in

accordance with the regulations and restrictions adopted under s. 59.69, Stats., instead of a building or zoning permit for structural alterations, expansions, and replacements of nonconforming structures, provided that the requirements of this section are satisfied. However, counties may not substitute the conditional use permit process for the variance process where a variance is required under this chapter.

(b) *Nonconforming structure standards.* Counties may apply to the department for approval of alternative nonconforming structure standards that are different than the standards in subs. (3)(b) and (c) and subs. (4)(b), (c), and (d).

1. If counties choose to limit allowable structural alterations, expansions, and replacements of nonconforming structures to costs that do not exceed 50% of the value of the existing nonconforming structure over the life of the structure, the county shall include the retail value of any donated materials and any donated labor in calculating the cost of the work.

2. If counties choose to limit allowable structural alterations, expansions, and replacements of nonconforming structures with standards that are different from subs. (3)(b) and (c) and subs. (4)(b), (c) and (d); or subd. 1., applications filed by counties under this subsection shall demonstrate to the department all of the following:

a. How the proposed standards will require nonconforming structures to ultimately become compliant with the provisions of this chapter and the county's shoreland zoning ordinance.

b. How the proposed standards will achieve the purposes of ss. 281.31 (1) and (6). Stats. to control and prevent water pollution, prevent further degradation of near-shore aquatic, wetland and upland wildlife habitat, and preserve the natural scenic beauty of navigable waters.

c. How the proposed standards are more restrictive or as restrictive as those in subs. (3)(b) and (c) and subs. (4)(b), (c) and (d); or subd. 1. Standards less restrictive than those in (3)(b) and (c) and subs. (4)(b), (c) and (d); or subd. 1., are presumed to not achieve the purposes of ss. 281.31 (1) and (6), Stats.

NR 115.21 Performance standards for shoreland construction, expansion, and replacement of principal structures. (1) **PURPOSE.** Counties shall adopt performance standards for shoreland construction, expansion and replacement of principal structures to achieve the purposes of ss. 281.31 (1) and (6), Stats. by ensuring that the construction, expansion and replacement of principal structures in the shoreland zone are designed, implemented, and maintained in a manner to limit environmental impacts in order to prevent and control water pollution, and to limit direct and cumulative impacts of development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

(2) **GENERAL.** (a) *Permit conditions.* The construction, expansion, or replacement of a structure in the shoreland zone may not be permitted unless all of the conditions in this section are satisfied or a variance has been granted by the county board of adjustment.

(b) *Condominiums and other multi-unit developments.* 1. If counties receive an application for a permit to authorize the construction, expansion, or replacement, of a dwelling unit, building or other structure in the shoreland zone that is owned as a condominium or is part of a resort or other multi-unit development, counties shall require the applicant to comply with all of the performance standards that would be applicable if the dwelling unit, building or other structure were under a different form of ownership.

2. Where a property owner is required under this section to preserve and maintain, or establish and maintain, a primary and secondary shoreland buffer, counties shall require the

owner of the dwelling unit, building or other structure and the condominium association, if applicable, to submit a plan for the preservation, or restoration, and maintenance of a primary and secondary shoreland buffer. The primary and secondary shoreland buffer shall run parallel to the ordinary high-water mark for a distance that equals or exceeds the total number of feet calculated using the following formula: the total width of the lot or parcel of land at the ordinary high-water mark divided by the total number of dwelling units located within 300 feet of the ordinary high-water mark on the lot or parcel of land multiplied by 70%.

Note: For example, a condominium development or resort with 1,000 feet of frontage, 10 dwelling units within 300 feet of the ordinary high-water mark and 10 dwelling units more than 300 feet from the ordinary high-water mark would calculate the width of the required vegetative buffer as follows: The vegetative buffer mitigation requirement for the construction, expansion or replacement of 1 dwelling unit would be $(1,000 \text{ feet} / 10) \times 70\%$ or 70 feet of vegetative buffer, measured along the ordinary high-water mark.

(3) EXPANSIONS OF PRINCIPAL STRUCTURES. The expansion of a principal structure in the shoreland area, may not be permitted unless all of the following conditions are satisfied:

(a) *Water quality performance standard.* 1. A site-specific stormwater management plan shall be developed to control stormwater runoff resulting from impervious surfaces. Best management practices specified in the stormwater management plan shall be implemented and maintained. The stormwater management plan shall, to the maximum extent practicable, direct runoff from impervious surfaces onto pervious surfaces. Examples may include directing downspouts onto lawns or rain gardens and away from pavement or driveways, and avoidance of piping or channelizing flow from impervious surfaces into waters of the state; or

2. A property owner may submit documentation to the county from a professional engineer registered under s. 443.04, Stats., or landscape architect registered under s. 443.035, Stats., certifying that at least 80% of the stormwater runoff from impervious surfaces on the lot or parcel of land is controlled on-site without best management practices and that stormwater runoff from impervious surfaces does not enter navigable waters or wetlands.

Note: The department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control erosion and sediment runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list or visit the department's storm water webpage at www.dnr.wi.gov/org/water/nps/stormwater.htm

(b) *Natural scenic beauty performance standard.* The principal structure shall be rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures

(4) CONSTRUCTION AND REPLACEMENT OF PRINCIPAL STRUCTURES. The construction or replacement of a principal structure in the shoreland zone may not be permitted unless all of the following conditions are satisfied:

(a) *Water quality performance standard.* 1. A site-specific stormwater management plan shall be developed to control stormwater runoff resulting from impervious surfaces. Best management practices specified in the stormwater management plan shall be implemented and maintained. The stormwater management plan shall, to the maximum extent practicable, direct runoff from impervious surfaces onto pervious surfaces. Examples may include directing downspouts onto lawns or rain gardens and away from pavement or driveways, and avoidance of piping or channelizing flow from impervious surfaces into waters of the state; or

2. A property owner may submit documentation to the county from a professional engineer registered under s. 443.04, Stats., or landscape architect registered under s. 443.035, Stats., certifying that at least 80% of the stormwater runoff from impervious surfaces on the lot or parcel

of land is controlled on-site without best management practices and that stormwater runoff from impervious surfaces does not enter navigable waters or wetlands.

Note: The department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control erosion and sediment runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list or visit the department's storm water webpage at www.dnr.wi.gov/org/water/nps/stormwater.htm

(b) *Wildlife habitat performance standard.* The primary shoreland buffer on lots or parcels of land in the shoreland setback area shall be preserved and maintained, or established, and maintained. The primary shoreland buffer shall be preserved or established in compliance with s. NR 115.15.

(c) *Natural scenic beauty performance standard.* The principal structure shall be rendered visually inconspicuous when viewed from the water by screening with vegetation, using materials that blend into the surrounding natural landscape or other design measures and all nonconforming accessory structures in the shoreland setback area on the lot or parcel of land shall be removed.

(5) **OPTIONAL STANDARDS.** (a) In addition to the performance standards required under subs. (3) and (4), counties may also require property owners to implement additional performance standards as a condition of a permit that authorizes the construction, expansion, or replacement of a structure in the shoreland zone.

(b) Counties may apply to the department for approval of alternative performance standards that are different than the standards in sub. (3) and (4). Applications filed by counties under this subsection shall demonstrate to the Department all of the following:

1. How the proposed standard will achieve the purposes of ss. 281.31 (1) and (6), Stats., to control and prevent water pollution, prevent further degradation of near-shore aquatic, wetland and upland wildlife habitat, and preserve the natural scenic beauty of navigable waters.

2. How the proposed standard is more restrictive or as restrictive as that in subs. (3) and (4). Standards less restrictive than that in subs. (3) and (4) are presumed to not achieve the purposes of s. 281.31 (1) and (6), Stats.

NR 115.23 Adoption of administrative and enforcement provisions. The shoreland ordinance adopted by each county shall provide for:

(1) The appointment of a zoning administrator, or staff person with the duties of a zoning administrator, and such additional staff as the workload may require.

(2) The creation of a county zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(3) A system of permits and fees for all new development, construction, replacement, expansion, structural alteration, demolition and moving of buildings and other structures and other activities as required by this chapter. A copy of all applications shall be required to be filed in the office of the county zoning administrator. All county shoreland zoning ordinances shall provide that permits shall expire after one year if construction has not commenced by that date. Ordinances shall also provide that the property owner may reapply for a permit, after the initial permit has expired, and new permit may be granted if all applicable requirements of the ordinance are satisfied at the time of re-issuance.

(4) Regular inspection of permitted work in progress to insure conformity of structures and other activities with the requirements of the county shoreland zoning ordinance.

(5) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance in accordance with the regulations and restrictions under s. 59.694 (7)(c), Stats. All variances that are granted shall expire after one year if the construction that is allowed by the variance has not commenced by that date.

(6) The incorporation of the purpose sections in in the relevant sections of the county shoreland zoning ordinance, and in the county land division regulations that apply in the shoreland zone.

NOTE: The Wisconsin Supreme Court has held that whether or not “unnecessary hardship” exists in a variance case “will depend upon the board of adjustment’s consideration of the purpose of the zoning restriction in question (including the important public purposes of shoreland zoning generally), the effect of the restriction on the property, and the effect of a variance on the neighborhood and the larger public interest.” *State ex re. Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 at ¶ 42. See also *State v. Waushara County Board of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514 at ¶ 32.

(7) A conditional use procedure for uses presenting special conditions. Counties may not substitute a conditional use permit process for the variance process in situations where a variance is required under this chapter.

(8) The county shall keep a complete record in form of written minutes, a tape recording or transcript of all proceedings before the board of adjustment, and the county zoning agency, and shall retain these records in compliance with the requirements of the public records law in ss. 19.21 to 19.39, Stats.

(9) Written notice and a copy of all application forms and attachments submitted by the applicant shall be sent to the appropriate regional office of the department by the county at least 10 business days prior to all hearings on proposed variances, conditional uses, appeals for map or text interpretations, and map or text amendments, and the county shall submit to the same office of the department copies of decisions on variances, conditional uses, appeals for map or text interpretations, and map or text amendments within 10 business days after they are granted or denied.

(10) Mapped zoning use districts and the recording, on an official copy of such map, of all use district boundary amendments. The boundaries of the shoreland zone and the location of navigable waters are not required to be mapped if described in the text of the ordinance.

(11) The establishment of appropriate penalties for violations of the requirements of the ordinance, including at a minimum forfeitures of not less than \$10 and not more than \$1,000 per violation, or twice the amount of any permit fee that the violator did not, but should have, paid, whichever is more. Each day of continued violation is a separate offense. Compliance with the ordinance shall also be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(12) The prosecution of violations of the ordinance.

(13) The procedure that is to be followed to process applications from persons who claim to be disabled and who are requesting that they be allowed to take action that would otherwise be prohibited under the shoreland zoning ordinance because of their disability. In order to allow a disabled person who is entitled to reasonable accommodations under the Americans with Disabilities Act, the federal Fair Housing Act or the Wisconsin Open Housing Law to take action

that would otherwise violate the requirements of the county's shoreland zoning ordinance, counties shall issue an administrative permit to the disabled person. Counties may not issue variances to disabled persons unless the statutory variance criteria in s. 59.694 (7)(c), Stats., are satisfied for the lot or parcel of land in question.

NOTE: The Americans with Disabilities Act ("ADA"), 42 USC 12101 to 12213, requires states and local units of government to take action to avoid discriminating against disabled persons in their employment practices, in public accommodations and in all programs, activities and services provided by the governmental entity. The federal Fair Housing Act, 42 USC 3601 to 3631, and the Wisconsin Open Housing Law, s. 106.50, Stats., require local governments to make "reasonable accommodations" in the application of zoning ordinances in order to provide equal opportunity to housing to disabled persons. However, the issuance of a variance is not the appropriate mechanism for granting "reasonable accommodations" that are required because of a person's disabilities because, under Wisconsin law, variances can only be granted based on the unique characteristics of the property.

NR 115.25 Department duties. (1) **ASSISTANCE TO COUNTIES.** To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning ordinances, consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

(2) **REVIEW AND APPROVAL OF SHORELAND ZONING ORDINANCES.** (a) Compliance with the requirements of s. 59.692, Stats., will be determined by the department by comparing the shoreland zoning ordinance that has been enacted by a county with the minimum standards for shoreland regulation contained in this chapter. The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., this chapter and amendments to this chapter.

(b) The department shall periodically reevaluate shoreland zoning ordinances to ascertain their continuing compliance with this chapter. A county shall keep its shoreland zoning ordinance current, effective and workable to retain its status of compliance.

(c) The department shall review all proposed shoreland zoning ordinance amendments, including amendments to shoreland wetland zoning districts pursuant to s. NR 115.07 (5), to ensure that an ordinance which is amended as proposed will retain its status of compliance with s. 59.692, Stats., and this chapter.

(3) **DETERMINATION OF ORDINANCE NONCOMPLIANCE.** (a) Counties that do not have a shoreland zoning ordinance in effect shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. The department shall, pursuant to s. 59.692 (6), Stats., adopt an ordinance, after notice and hearing, if a county fails to adopt a complying shoreland zoning ordinance within 6 months after taking one or more of the following steps:

1. Proceeding on its own with the drafting and enactment of a shoreland zoning ordinance.

2. Contracting with a consultant to draft a shoreland zoning ordinance.

3. Cooperating with the staff of the department to draft the shoreland zoning ordinance to be enacted by the county. All costs for such action by the department shall be borne by the noncomplying county.

(b) Counties that have shoreland zoning ordinances that do not meet the minimum standards contained in this chapter shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats.

1. If a county fails to modify its ordinance to meet the minimum standards in this chapter within 2 years after [Revisor: insert the effective date of this rule order], unless the department grants an extension in response to an explanation from the county as to why more time is needed, the department shall adopt a superseding ordinance amendment for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

2. If a county fails to modify its ordinance to meet the minimum standards in this chapter within 6 months after a notification of noncompliance, unless the department grants an extension in response to an explanation from the county as to why more time is needed, the department shall adopt a superseding ordinance amendment for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(4) MONITORING OF ZONING DECISIONS. It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning ordinances. In so doing, the department:

(a) Shall review decisions granting conditional uses, variances and appeals to ensure compliance with the county shoreland zoning ordinance and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek certiorari review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.